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CHARLES ELMORE OROPLEY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1945.

No. 798

HAROLD M. STEINER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

ROBERT A. GRANT,

House Office Building,

Washington, D. C.,

JOHN KITCH and

DON KITCH,

120 West Garro Street,

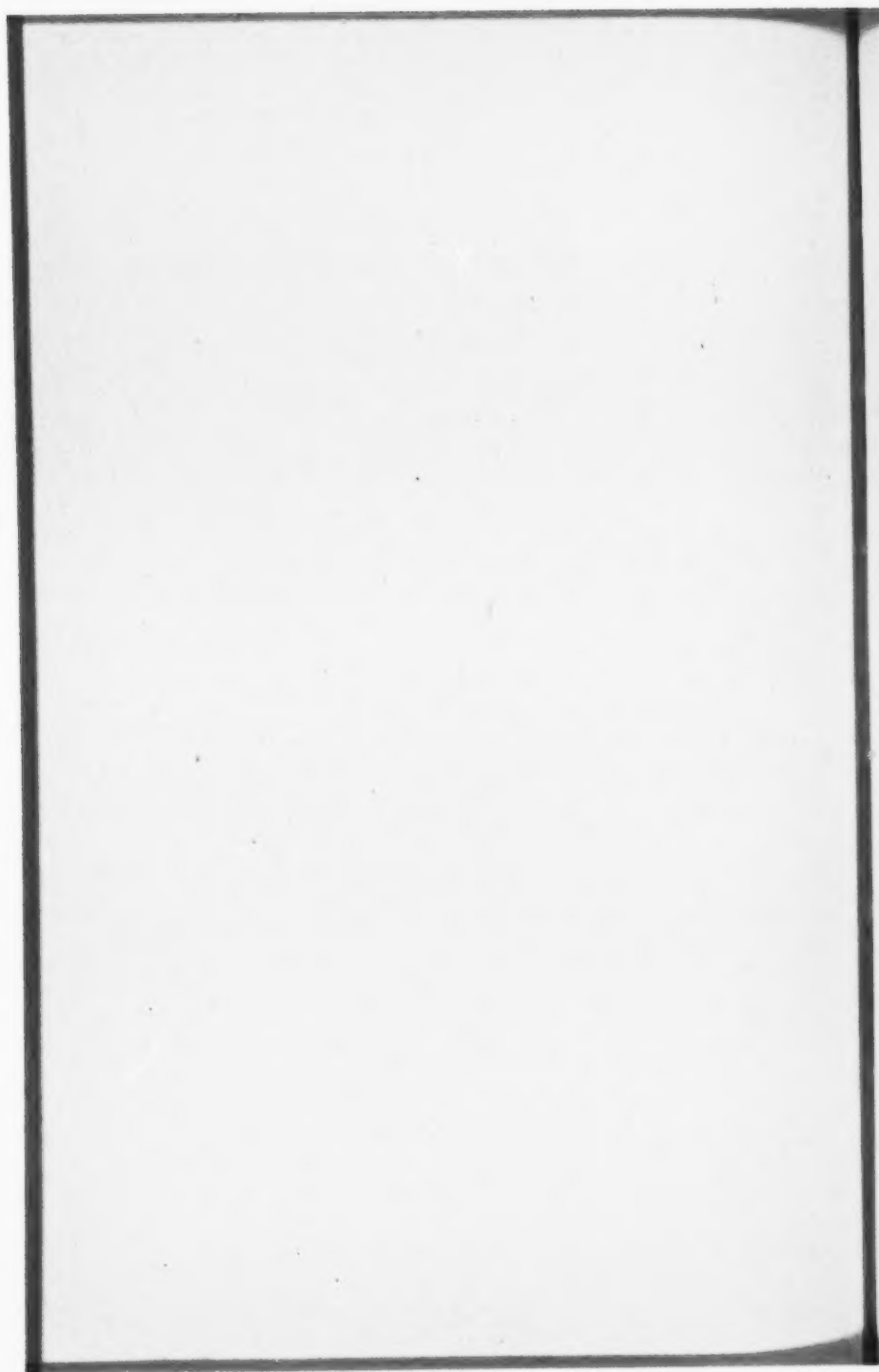
Plymouth, Indiana,

WALTER R. ARNOLD,

404-415 National Bank Building,

South Bend, Indiana,

Attorneys for Petitioner.



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GROUP 10

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**PETITION FOR WRIT OF CERTIORARI TO THE
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The petitioner, Harold M. Steiner, by his counsel, Robert A. Grant, John Kitch, Don Kitch and Walter R. Arnold, respectfully petitions this Honorable Court to issue its writ of certiorari directed to the United States Circuit Court of Appeals for the Seventh Circuit, to review the judgment entered in this cause by said Circuit Court on the 18th day of December, 1945, and in respect of which the said Circuit Court denied petitioner's petition for re-hearing on the 8th day of January, 1946.

Opinion Below.

The opinion of the Circuit Court of Appeals is annexed to the certified transcript of the record filed by petitioner herein. (P212)

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered December 18, 1945, and petitioner's petition for rehearing was filed therein within ten days thereafter, but denied by the said Circuit Court on the 8th day of January, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C. Sec. 347 (a)).

Question Presented.

The cardinal question presented is the correctness or error of the following assumption of prerogative in the trial of a criminal cause by the presiding Judge of the District Court for the Northern District of Indiana in relation to instructions to a jury, and approved by the Circuit Court of Appeals for the Seventh Circuit in affirming a judgment and sentence of petitioner, *i. e.*,

In a criminal cause prosecuted by the United States before a jury for alleged violation of a maximum price regulation, where the charge against the defendant is a sale of a commodity, and the undisputed evidence discloses but a delivery of the commodity under a written contract of bailment, if the Trial Court and the Circuit Court of Appeals are convinced that it was the purpose of the defendant thus to evade a maximum price regulation by the written contract, it was proper for the Trial Court to instruct the jury as matter of law that the written contract of bailment did actually constitute a sale and was justified in declining to give to the jury, at the request of the defendant, the following instruction:

"If these contracts have been voluntarily executed by the parties whose signatures they bear, and as between them there was no extraneous understanding or agreement to nullify any provision

expressed in the instrument, the transaction evidenced thereby is a lease of the chattel and not its sale."

The critical question is this: Where the presiding judge in a criminal cause tried to a jury is convinced that a written contract is not meant by the parties thereto to be what it purports to be—a legitimate agreement of bailment—the trial judge has the right to assume it was meant to conceal an unlawful sale, as charged in the indictment, and to give to the jury a binding instruction to that effect and to refuse to give to the jury an instruction, requested by the defendant, that if the instrument correctly recites what the parties thereto agreed upon it is to be given that effect. Concretely stated and applied to the facts in this cause, as it was to petitioner's injury, the facts leading to the exercise of this unconstitutional action may be summarized as follows:

(a) The Price Control Act of 1942, (Chapter 26, 56 Stat. 23, Sec. 4 (a)), prohibited and penalized any person who *sold* or delivered any commodity in violation of any regulation or order of the Price Administrator.

(b) The Price Administrator promulgated a regulation (MPR 133) fixing "ceiling" *prices* on second-hand or used agricultural implements.

(c) The Price Administrator did not undertake in any manner to fix any "ceiling" *rentals* on agricultural implements, though he possessed the power to do so and, on the same day that he issued MPR 133, exercised that power in respect of many other implements. (MPR 134.)

(d) The petitioner, an auctioneer, offered to farmers being in need of such implements, to let to them such implements for a period of ten years, title to remain in the petitioner's principal, the owner, and to be returned at the expiration of the bailment, the person making the highest

bid for one year's hire to receive the bailment of the implement bid on. (R 21-37; R 44-86)

(e) The annual hire offered by the successful bailee, when multiplied by ten—the number of years expressed in the executed lease—exceeded the “ceiling” price for the implement established by MPR 133. (R 142-143)

(f) After the lease of the implement was struck off to the highest annual rental bidder, and before he received the article in his possession, a written contract of bailment was executed between himself and the owner whereby the implement was let unto the bailee for a period of ten years at an annual rental as bid, the whole of the rental for the entire term being paid at the time of execution of the instrument or before delivery of the implement. (R 131-133)

(g) The petitioner knew the terms of the contract of bailment and had provided the forms to the owner's clerk for use by the latter in consummation of the transaction. (R 20)

(h) The lease form was used only in such cases where the bids on the *sale* of the implement exceeded the ceiling price therefor fixed by MPR 133, and whenever that occurred in the course of a sale, the petitioner would cancel all bids for the purchase of the implement and proceed to offer the implement on a lease basis.

HELD: The presiding District Judge correctly drew the conclusion that the contract of bailment was designed as a subterfuge to evade the price regulation and correctly instructed the jury that the contract should be disregarded as a *bailment* of the implement, and the petitioner, as matter of law, should be held to its effect as a contract of *sale*, and there was no error on the part of the trial court to refuse to give to the jury, at the request of the petitioner, the tendered instruction above quoted. (R 218)

Statutes Involved.

The pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23, Chapt. 26; 50 U. S. C. 902-924) and the relevant provisions of Maximum Price Regulation No. 133, are as follows:

"Whenever in the judgment of the Price Administrator the price or prices of a commodity or commodities have risen or threatened to rise to an extent or in a manner inconsistent with the purposes of this Act, he may, by regulation or order, establish such maximum price or maximum prices as, in his judgment, will be generally fair and equitable and will effectuate the purposes of this Act. * * * As used in the foregoing provisions of this subsection, the term 'regulation or order' means a regulation or order of general applicability and effect." (Chapter 26, 56 Stat. 23 Sec. 2 (a).)

"Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof." (Sec. 2, sub-section (g) Chapter 26, 56 Stat. 23.)

"It shall be unlawful * * * for any person to sell or deliver any commodity * * * or otherwise to do or omit to do any act in violation of any regulation or order under Section 2, * * * or to offer, solicit, attempt, or agree to do any of the foregoing." (Chapter 26, 56 Stat. 23, Sec. 4 (a).)

"Nothing in this Act shall be construed to require any person to sell any commodity * * *." (Chapter 26, 56 Stat. 23, Sec. 4 (d).)

"Any person who willfully violates any provision of Section 4 of this Act * * * shall, upon conviction thereof, be subject to a fine of not more than \$5,000.00 or to imprisonment for not more than * * * one year * * * or to both such fine and imprisonment." (Chapter 26, 56 Stat. 23, Sec. 205 (b).)

Applicable Parts of Maximum Price Regulation No. 133.

"1361.3a. Maximum prices for used equipment—
(a) Applicability of this section. This section is applicable to sales by all persons of the following items of used farm equipment:

- (1) Combines.
- (2) Corn binders.
- (3) Corn pickers.
- (4) Farm tractors (except crawler tractors).
- (5) Hay balers (motor or tractor operated).
- (6) Hay loaders.
- (7) Manure spreaders.
- (8) Side delivery rakes.
- (9) A combination of any of the items just listed with other items of farm equipment specifically designed for mounting thereon, where the combination is sold as a unit.

This section is also applicable to sales by retail dealers of any complete item of used farm equipment. This section is not applicable to sales of used farm equipment parts.

(b) Maximum prices for sales by farmers, auctioneers, etc. The maximum price for a sale by a person, other than a retail dealer, of any item listed in sub-paragraphs (1) to (8), inclusive, of paragraph (a), shall be determined as follows: If the item is sold within one year after sale new, the maximum price shall be 85% of the 'base price'. In any other case, the maximum price shall be 70% of the 'base price'. In the case of a combination sale referred to in paragraph (a) (9), the maximum price for the combination shall be equal to the sum of the maximum prices of each of the items of farm equipment sold as a part of the combination. These maximum prices shall be determined in the manner just set forth.

(I) Base Price. The 'base price' which must be used in determining maximum prices shall be the first of the following which is available:

(i) The manufacturer's current suggested retail price for the item.

(ii) The last suggested retail price for the item that the manufacturer issued.

(iii) If the item never had a suggested retail price, the base price is the maximum price for which the same or nearest equivalent item would be sold new in the locality, minus carload freight from the plant or manufacturer of the item."

STATEMENT.

Petitioner was indicted under seventeen separate counts of an indictment, each charging a distinct "sale", in violation of MPR 133, of a particularly described farm implement to a specified "purchaser" at a specified "price". He was found guilty on each of fifteen counts and sentenced to the custody of the Attorney General for a period of one year on each of eight counts (sentences to run concurrently) and to make his fine in the total sum of \$1,600.00 on said eight counts, and to six months on each of the other seven counts and to make his fine thereon in the amount of \$1,400.00.

The relevant evidence at the trial was undisputed as to each of the fifteen counts, *i. e.*, that in each instance there was no sale of any property, but the petitioner, as auctioneer, offered the implement for rent for a period of ten years, and announced that the bidder making the highest bid for the rental for one year would enter into a lease agreement with the owner through the owner's clerk. In each instance the successful bidder, fully understanding that he was not purchasing the implement but merely acquiring a bailment thereof, would repair to the clerk after making his successful bid, and with the clerk transact the remainder of the business. A written contract of bailment was then executed between the bailee and the owner through the clerk to the following tenor:

"LEASE OF EQUIPMENT.

The undersigned _____, hereinafter designated as 'the lessor' has let unto the undersigned _____, hereinafter designated 'the lessee' the following agricultural tools, machinery and equipment:

.....

1. The term of this lease is 10 years at an annual rental of Dollars, a total rental of Dollars. Of this amount the lessee has paid to the lessor Dollars, to leave a balance of no/100 Dollars owing on the rental for the remainder of the term. This balance shall be paid to the lessor in equal annual installments at the annual rate aforesaid, in advance, the first payment on this balance to be made on that anniversary date of this lease constituting the end of the period for which the advance rental payment has been this day paid to the lessor. If the lessee shall fail to pay the same when so due, the lessor shall resort to the deposit described in the next succeeding paragraph of this lease and draw thereon for the rental so falling due, and from year to year thereafter (in event of such continued non-payment) until the expiration of this lease.

2. The lessee has deposited with the lessor the sum of Dollars as security for the payment of the balance of the rentals herein called for and as security for the return, at the end of the term of this demise, of the chattels aforesaid, in as good a condition as they now are in, in full repair and state of efficient operability. The lessee undertakes, unconditionally and without exceptions, for himself, successors and assigns, the return of the chattels to the lessor in the condition aforesaid at the end of the demise. Provided, However, in no event shall the said lessee, his heirs, executors, administrators, assigns and successors be holden to any liability for breach of this covenant or any other provision of this lease in excess of the amount of deposit for security, as in this paragraph specified. Provided, Further, However, in event the deposit aforesaid or any part thereof of the advance rental payment or any part thereof is not paid in cash but evidenced by a promissory note or notes accepted by the lessor, nothing herein contained shall operate as any defense to, set off or counterclaim against or furnish any ground for postponement

of the maturity date fixed by such note or notes, and such note or notes shall be collectible in accordance with their tenor, wholly apart from and without regard to any limitation of liability on the lessee as herein expressed.

3. The lessee shall list the chattels as his property for taxation and pay and discharge when due any and all taxes and other governmental excises and exactions whatsoever on account of the ownership, operation, or this bailment of the said chattels, and hereby indemnifies and agrees to hold the lessor harmless therefrom.

4. The lessee may assign this lease, or sublet the chattels, but with such assignment shall pass to the assignee's debt account security all deposits made with the lessor, and such assignee shall then, without diminution of obligation, stand in the shoes of the lessee, and likewise every subsequent sublessee and assignee thereof. Should the lessee or his assigns at any time undertake to make disposition of the chattels, the purchaser in good faith shall, notwithstanding any lack of consent on the part of the lessor, take good title thereto as against the lessor, and the lessor shall then be entitled to full appropriation of the deposit for security in like manner as on the destruction of the chattels, and any unearned rentals in the hands of the lessor shall be deemed then fully earned.

5. No guarantees, representations or warranties whatsoever are made by the lessor to the lessee in relation to the chattels hereby let, it being understood that the lessee has examined the same and knows their character and quality.

Executed at _____, Indiana, this _____
day of _____, 194_____.

Lessor.

(R131-133)

Lessee."

In the blank spaces would be inserted the appropriate names of the bailor and bailee, respectively, the annual rental, the aggregate rental, the amount of the "deposit", the place of execution of the contract, the date of execution and the subscribing signatures of the respective parties, in the order as the blanks appear. In relation to the facts charged in two or three of the counts of the indictment the evidence disclosed that there were obvious errors of the scrivener in filling these blanks, but in every instance the intent of the successful bidder to acquire but a bailment and not title to the article described in the apropos count of the indictment is undisputed. (R 21-37; R 44-86)

The petitioner, at the conclusion of the evidence, requested that the Court direct the jury to find the petitioner not guilty. This the trial court refused to do, and petitioner excepted. The trial court, referring to the executed written instruments, instructed the jury as follows:

"There have been admitted into evidence certain instruments which bear the heading, 'Lease of Equipment'. They are exhibits and will be taken by you to the jury room. It is my duty, as part of these instructions to you, to construe these instruments—I shall say to you now that counsel have stated that they are all identical—that is, it is my duty to inform you as to the meaning as a matter of law of these written instruments called 'Leases', or 'Leases of Equipment'.

Therefore, I instruct you that these instruments are not to be construed as or to be given the legal effect of a lease in fact, regardless of the fact that the people who signed them are designated 'Lessor' or 'Lessee'." (R170)

The petitioner excepted to the charge.

The trial court further instructed the jury, in respect to said written instruments:

"You are further instructed that in such instance these instruments, in and of themselves, do not constitute a defense to the violations charged in the various counts of the indictment." (R170)

The petitioner requested the trial court to instruct the jury with respect to said written instruments

"the forms so executed constitute leases of personal property," (R179)

which instruction the trial court refused to give to the jury and petitioner excepted.

Further, the petitioner requested the trial court to give to the jury, as part of its charge in respect to said contracts:

"If these contracts have been voluntarily executed by the parties whose signatures they bear, and as between them there was no extraneous understanding or agreement to nullify any provision expressed in the instrument, the transaction evidenced thereby is a lease of the chattel and not its sale," (R179)

but the trial court declined to give this charge and the petitioner excepted.

The trial court did not give any instructions to the jury embodying the substance of any of these requests.

The Circuit Court of Appeals, in and for the Seventh Circuit, declined to disturb the judgment and sentence holding:

"The court correctly construed the instrument, and no error was committed in giving the above instruction." (R218)

The Circuit Court of Appeals disregarded the assigned errors on the part of the petitioner in respect to the refusal of the trial court to give the above quoted instructions so tendered by the petitioner.

Reasons for Granting the Writ.

Petitioner believes the record in this cause, on the basis of the foregoing statement of the material parts thereof, sufficiently invokes the intervention of this Court to annul a judgment of the Circuit Court of Appeals for the Sev-

enth Circuit as having sanctioned what is probably so far a departure from the accepted and usual course of judicial proceedings as to call for the exercise of the power of supervision of the Supreme Court of the United States as envisaged by Rule 38, Section 5, subsection (b), of the Rules of this Court. The petitioner contends that such action on the part of the trial judge, so acquiesced in by the Circuit Court of Appeals has deprived petitioner of a constitutional trial by jury, the presiding trial judge having substituted his own conclusions of fact and, in effect, directed the jury to shape its verdict in accordance with such conclusion of the presiding judge, when petitioner was constitutionally entitled to have the jury pass on the question of intent and purpose of the petitioner, and whether the parties intended a transaction to accord with the recitals of the instrument they executed, and petitioner asks this Court to refer to the brief of petitioner annexed hereto as appendix in support of petitioner's position.

It is respectfully submitted that this petition for writ of certiorari should be granted.

Robert A. Grant
John Kitch
Don Kitch
Walter R. Arnold

Attorneys for Petitioner.

Business Addresses:

ROBERT A. GRANT,
 House Office Building,
 Washington, D. C.

JOHN KITCH and
DON KITCH,
 120 West Garro Street,
 Plymouth, Indiana.

WALTER R. ARNOLD,
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